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MAR 9, 2007

**Director's Office
Group 3700**

In re Application of: ANSON et al : DECISION ON PETITION
Appl. No.: 09/762,223 :
Filed: May 7, 2001 :
For: DEVICES AND METHODS FOR THE :
REPAIR OF ARTERIES :
:

This is a decision on the petition filed on December 8, 2003 by which petitioner requests reconsideration of the propriety of the final Office action issued February 11, 2003. The petition is considered pursuant to 37 CFR 1.181, and no fee is required.

The petition is granted.

Review of the application and of the claims shows that on September 23, 2002, the examiner promulgated a first Office action. The claims were rejected under 35 USC 112, first and second paragraphs, and under 35 USC 103 based upon prior art to Green. Claim 70 was objected to. In response, on December 30, 2002 petitioner submitted amendments claims 55, 62, 68 and 69 to clarify the claims under 35 USC 112 second paragraph and argument to the first paragraph rejection and to the rejections based upon prior art. In response, on February 11, 2003 the examiner issued a office action, which was styled a final rejection upon the cover sheet and in the Office PALM system. This office action contained rejections based upon new specification objections, new 35 USC 112 first paragraph issues, and 35 USC 102 rejections based upon newly cited prior art. The examiner did not address any of the presented arguments, nor did the body of the office action conclude that prosecution is closed. On August 19, 2003 petitioner filed a request for reconsideration of the finality of the office action, and an amendment. This request was denied and entry of the amendment refused in an advisory action mailed September 3, 2003. Petitioner now petitions under 37 CFR 1.181 for supervisory review seeking reconsideration of and withdrawal of the finality of the office action, withdrawal of any abandonment of the application, entry of the August 19, 2003 amendment and the application returned to examination.

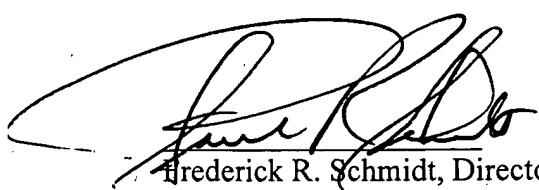
The advisory action of November 10, 2005 states in part "the addition limitation would require reconsideration of the cited references and another search". It does not address petitioner's request for reconsideration of the finality of the office action nor provide any reasoning or support for the office action having been styled "Final" on its cover sheet.

The holding of the February 11, 2003 office action as a Final action is without support in the Manual of Patenting Examining Procedures. As set forth in MPEP 706.07(a) under present practice, second or any subsequent actions on the merits shall be final except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment to the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with appropriate fee. In the instant application, as there was no amendment to the claims other than minimal clarification of antecedent basis issues to address 35 USC 112 second paragraph rejections, there is no basis for the change in rejections. Further, the record appears incomplete as the examiner's position with respect to petitioner's arguments regarding the prior art and enablement rejections have never been addressed on the record. The Advisory action also fails to address the issues at hand and appears dismissive. The examiner should never lose sight of the fact that in every case the applicant is entitled to a full and fair hearing and that a clear issue between applicant and examiner should be developed. Such has not happened in the instant application.

The finality of the February 11, 2003 office action is premature. Accordingly, the finality of the rejection mailed February 11, 2003 is hereby withdrawn. The August 18, 2003 amendment is to be styled a timely response to the February 11, 2003 office action and entered into the record. The application is not abandoned. The application is being forwarded to the Head Supervisory Applications examiner for correction of the PALM system to reflect the decision herein. Further, the Head Supervisory Applications examiner will ensure that the paper file is converted to the Image File Wrapper system (IFW) and will then forward the application to the Examiner of record to resume prosecution of the application.

Questions regarding this decision may be directed to J. Harrison, TC 3700 Special Programs Examiner and 571-272-4449.

PETITION GRANTED



Frederick R. Schmidt, Director
Technology Center 3700